



European Securities and  
Markets Authority

# Response Form to the Consultation Paper

Implementing technical standards under Regulation (EU) 2019/1156



## Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **30/06/2020**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_PFG\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_PFG\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_PFG\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading "Your input – Open consultations" → "Consultation on Position limits and position management in commodities derivatives").

## **Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

## **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

## **Who should read this paper**

This document will be of interest to (i) alternative investment fund managers, UCITS management companies, EUSEF managers and/or EuVECA managers and their trade associations, (ii) distributors of UCITS, alternative investment funds, EuSEFs and EuVECAs, as well as (iii) institutional and retail investors investing into UCITS, alternative investment funds, EuSEFs and/or EuVECAs and their associations..

## General information about respondent

Name of the company / organisation	CFA Institute
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Europe

## Introduction

*Please make your introductory comments below, if any*

<ESMA\_COMMENT\_PFG\_1>

CFA Institute welcomes the opportunity to comment the draft Implementing Technical Standards under the Regulation on crossborder distribution of funds.

CFA Institute is the global association of investment professionals that sets the standards for professional excellence. We are a champion for ethical behaviour in investment markets and a respected source of knowledge in the global financial community. Our mission is to lead the investment profession globally by promoting the highest standards of ethics, education, and professional excellence for the ultimate benefit of society. There are more than 170,000 CFA charterholders worldwide in 162 markets. CFA Institute has nine offices worldwide and there are 158 local member societies.

One of our key goals is the promotion of investor protection. Total transparency on marketing requirements, and on information regarding costs and charges that authorities levy for investment products represents a prerequisite to build up European capital markets and reduce some of the current barriers to cross-border distribution of funds. Today, NCAs adopt different regulatory and supervisory practices for the cross-border distribution of UCITS and AIFs. A major alignment in the NCAs approaches would certainly favour the marketing of such funds across EU member states. To do that, documents providing information on applicable law and regulations should be published in a standardised form by all NCAs in the EU. Moreover, such information should be disclosed in a lingua franca, which could be English, as well as the official language/s of the member state where the fund is authorised.

CFA Institute supports the development of a central database listing all UCITS and AIFs marketed in member states and the fund management. This central register should contain information related to requirements for the distribution and, if possible, any other relevant information provided by NCAs on the authorisation process and distribution. Publication of such data would allow easier analysis and comparison for distributors and markets participants, who would also be better aware of any changes on applicable local legislation. Nevertheless, this tool would be more complete if it would also directly disclose all the fees and charges levied by NCAs (and not only hyperlinks to the websites of competent authorities) in order to streamline assessments and comparisons. This information, which would be timely communicated by NCAs to ESMA, could also be complementary to interactive tool, which will be developed by ESMA, providing an indicative calculation of these charges.

Finally, we would like to highlight that the objective of integrating the market for the distribution of cross-border funds in the EU can only be achieved by granting more supervisory powers to ESMA. Today, the main barriers to the passporting of these products across Europe are the different supervisory practices, marketing requirements and rules on the registration process that have been put in place by NCAs. A centralised supervision of the cross-border distribution practices in the EU would certainly lead to more harmonization. Furthermore, our European societies feel that regulations should be used much more than directives as legislative instruments to regulate the cross-border investment funds sector. Currently, the ample room for discretion that NCAs have in the transposition of directives on this financial markets segment often results in too many different regulatory and supervisory approaches.

<ESMA\_COMMENT\_PFG\_1>

## Questions

**Q1** : Do you agree that the information to be published should concern not only requirements applicable specifically to the marketing of investment funds, but should also encompass a general statement relating to the potential application of other bodies of law applicable within the concerned jurisdiction, such as rules on the protection of consumers in general? If so, do you agree that this general statement could take the form of a general disclaimer which refers to a non-exhaustive list of relevant bodies of law?

<ESMA\_QUESTION\_PFG\_1>

Yes, CFA Institute argues that National Competent Authorities should publish complete information on their website about the applicable requirements for the marketing of investment products as well as every other legislation (including those enacted by other bodies of law) that could apply. Providing only a general statement, indicating the other legislations could potentially be applicable, would not go in the direction of ensuring increased transparency and investor protection, which are amongst the purposes of the Regulation. Complete and clear information on all applicable laws and regulations should be disclosed on NCAs websites in order to make sure that distributors have a total understanding of the requirements that they need to comply with when marketing investment products.

<ESMA\_QUESTION\_PFG\_1>

**Q2** : Do you agree with the proposed approach regarding the format of the publications to be made by NCAs on their websites in respect of marketing requirements for UCITS and AIFs? If not, please provide alternative suggestions.

<ESMA\_QUESTION\_PFG\_2>

No, the format of the information published by NCAs on their websites should not be flexible but standardised. All NCAs should be required to use the same. A standardised format would facilitate the comparison and analysis of information. Distributors and investors may not fully understand completely the requirements disclosed in the websites if the information is not provided in a standardised way.

<ESMA\_QUESTION\_PFG\_2>

**Q3** : Do you agree with the approach taken regarding the main characteristics of the summary of marketing requirements that NCAs shall publish on their websites? If not, please provide details on the elements that you would favour including in the text or in table.

<ESMA\_QUESTION\_PFG\_3>

Yes, we agree on the characteristics of the summary of marketing requirements that ESMA proposes. In addition, the information included in these summaries should be clear, simple and standardised. At the same time, it is important that these summaries provide information that is necessary and sufficient for stakeholders to understand the marketing requirements in each member state.

<ESMA\_QUESTION\_PFG\_3>

**Q4** : Do you agree with the approach taken with respect to the scope of regulatory the fees and charges to be published by NCAs on their websites?

<ESMA\_QUESTION\_PFG\_4>

Yes, NCAs should have the discretion to disclose either the list of all regulatory fees and charges that they levy for the cross-border activities of fund or the calculation methodologies regarding such costs if a methodology exists. However, such information should be provided in a plain language that is clearly understandable for a reasonable investor with a basic knowledge of finance.

<ESMA\_QUESTION\_PFG\_4>

**Q5** : Do you agree that the publication to be made by NCAs under this ITS should be made in the form of a table? If not, do you have any alternative suggestion on the format of the publication on regulatory fees and charges?

<ESMA\_QUESTION\_PFG\_5>

Yes, we agree that a table could help harmonise the publication of information by NCAs regarding fees and charges. Publishing a table in a standardised format would ensure that the disclosures can communicate effectively the information that fund managers and investors need to comply with in the decision-making process. However, we believe that excessively detailed and complex information may not be beneficial for end investors, who may not understand the fees that they have been charged for. A different layer of key information to be provided for distributors and retail investors could make sure that the latter better understand the structure of fees and charges that they pay.

<ESMA\_QUESTION\_PFG\_5>

**Q6** : Do you agree that NCAs have the option to supplement the tables setting out the details of the fees and charges with a full text providing detailed information on the fees and the fee calculation, if a table would risk giving incomplete or misleading information?

<ESMA\_QUESTION\_PFG\_6>

We agree that additional and more detailed information on fees and charges and their calculation methodology could be provided to distributors. However, as mentioned in our response to q.5, excessive and detailed information could be counterproductive for the decision-making process of retail investors. If the provision of only a table may result in giving insufficient and misleading information for retail investors, NCAs should disclose data, which should be kept simple and easy to understand, under another structure that would turn out to be less confusing for investors.

On this question and the wider issue of product governance in the EU, CFA Institute has released in May 2020 a research report on the results of a member survey conducted in December 2019, titled *The Brave New World of Product Governance in the EU Asset Management Industry* (<https://www.cfainstitute.org/en/research/survey-reports/the-brave-new-world-of-product-governance-in-the-eu-asset-management-industry>). The study focused on how regulatory developments over time, in particular MiFID II and PRIIPs, have impacted investor information requirements as well as the way investment products are designed and marketed to investors.

Key highlights relevant for this consultation included:

- 54% of respondents think investors obtain enough information, yet they think these investors are probably struggling to understand the information because of its complexity.
- 69% of respondents agree the European Securities and Markets Authority (ESMA) should be granted more powers to oversee the cross-distribution of investment products across the EU.
- 52% of respondents think the PRIIPs Regulation (KID) and UCITS Regulation (KIID) frameworks are partially successful, as they have improved information consistency across products and providers, but there remain large variations in the quality and standardisation of information provided. However, 43% think the frameworks have failed to improve investor protection because of their complication.
- 31% of respondents think the PRIIPs KID performance scenarios are not easily understandable for the majority of investors, 24% think the Reduction-In-Yield (RIY) cost approach in the KID is not intelligible and difficult to compare and 19% think past performance information is missing.
- 53% of respondents completely agree or somewhat agree the PRIIPs KID and UCITS KIID formats should be harmonised, whereas 10% disagree.

We would be happy to discuss the results of this study in more details with your teams, if it can help your evaluation on how to gradually improve distribution of investment products in the EU, while ensuring a sound level of investor information.

<ESMA\_QUESTION\_PFG\_6>

- Q7** : Do you agree with the content of the table? Do you think any other information should be published by NCAs in relation to the regulatory fees and charges?

<ESMA\_QUESTION\_PFG\_7>

Yes, we agree on the proposed content of the table containing information on regulatory fees and charges. Additionally, NCAs should also disclose all fees related to the authorisation of the cross-border fund, and clearly explain how these charges are determined.

<ESMA\_QUESTION\_PFG\_7>

- Q8** : Please specify the use you would make of the information to be contained in the central database listing UCITS and AIFs marketed on a cross-border basis. Do you have any suggestion regarding the format of this central database?



<ESMA\_QUESTION\_PFG\_8>

A central database listing UCITS and AIFs that are marketed across EU markets could be helpful for distributors to better compare regulatory requirements applying locally on these investment products. A single register would facilitate the access to information that is scattered across NCAs. However, we would like to stress that ESMA could efficiently administer such a database only if the Authority is empowered of more regulatory and supervisory tasks. We also would like to express again how CFA Institute and also the CFA membership in the EU feels strongly in favour of ESMA gaining more supervisory powers over cross-border distribution and marketing rules.

<ESMA\_QUESTION\_PFG\_8>